



State of Connecticut COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

450 Columbus Boulevard, Suite 2, Hartford, CT 06103

Promoting Equality and Justice for all People

Labor Committee Public Hearing – March 3, 2022

CHRO Testimony Regarding

HB 5245 – AAC Forced Arbitration Agreements and Allowing Certain Court Actions to be Brought on Behalf of the State

HB 5248 – AAC Collateral Consequences of Criminal Convictions on Occupational Licensing

Senator Kushner, Representative Porter, Senator Sampson, Representative Arora, and members of the Labor Committee, the Commission on Human Rights and Opportunities appreciates the opportunity to submit testimony regarding HB 5245 and HB 5248.

HB 5245 - An Act Concerning Forced Arbitration Agreements and Allowing Certain Court Actions to be Brought on Behalf of the State

The CHRO would like to offer the following informational testimony regarding HB 5245. Any employee who wishes to allege employment discrimination against their employer must file a complaint with the Commission, and if they wish to pursue the matter in court, obtain a release of jurisdiction from the Commission. It's important to note that individuals can currently file and pursue complaints of discrimination at the Commission, even in situations where an arbitration agreement is in place. In EEOC v. Waffle House, Inc., 534 U.S. 279 (2002), the United States Supreme Court held that an agreement between an employer and an employee to arbitrate employment-related disputes does not bar the EEOC from pursuing victim-specific relief, such as back pay, reinstatement, and damages, in an ADA or Title VII enforcement action. Inasmuch as the Commission has the statutory right to file discrimination complaints, the Commission may also bring such complaints through its public hearing process or into court in some circumstances, pursuant to Public Act 19-93 and Conn. Gen. Stat. § 46a-84, and seek victim-specific relief. Additionally, the Office for Public Hearings at the Commission accepts whistleblower complaints via Conn. Gen. Stat. § 4-61dd, in which the Commission has a statutory right to intervene.

The Commission certainly shares the concern that forced arbitration puts employees at a distinct disadvantage. At least one study suggests that plaintiffs fare much worse in arbitration than in court litigation.¹ We are concerned that this bill as written allows private citizens to bypass the Commission, gutting the administrative process that was designed to lessen the burdens on the court system and potentially interfering with the Commission's institutional interests in these cases. The Commission has expertise in the state's civil rights scheme and a special interest in preserving the rights of all residents. A private attorney might not fully consider those interests. The Commission respectfully requests that if this bill should pass, it should at least be amended to make clear that the Commission must be given notice of such actions upon filing and be permitted to intervene as of right, pursuant to Conn. Gen. Stat. § 46a-103.

¹ See Katherine V.W. Stone & Alexander J.S. Colvin, *The Arbitration Epidemic*, ECON. POLICY INST. (Dec. 7, 2015), available at <https://files.epi.org/2015/arbitration-epidemic.pdf>.

Finally, we would also point out that this bill will result in a cost to the state as the Commission will need resources to intervene in court in these matters. There could also be a loss to the General Fund due to a loss of reimbursement from the EEOC if the cases are filed directly in court without being processed by the Commission.

The CHRO appreciates the importance of this issue and is available to work with the committee on this bill.

HB 5248 – An Act Concerning Collateral Consequences of Criminal Convictions on Occupational Licensing

The Commission is fully supportive of all legislative efforts to address the barriers faced by individuals with a criminal record as they reenter the community following their release from incarceration. Those barriers negatively affect their successful reentry into daily events many of us take for granted – including obtaining jobs to support their families and obtaining a professional license necessary to do so. According to the National Conference of State Legislatures, while over 77 million people, or one in three adults, have a criminal record, the requirement for an occupational license to perform a job has increased from 5% of all jobs in the 1950's to nearly 25% now. As the statistics show, people of color have been even more adversely impacted by the criminal justice system. Beyond the difficulty that a criminal record poses to securing employment, as more and more jobs require licensing, a criminal record can also prevent individuals from obtaining the licenses required to work. The Commission fully supports requiring state licensing agencies to determine whether a felony conviction is related to the license being sought, rather than having a blanket prohibition against licensing individuals with felony records. This bill works to prevent individuals from being denied certain enumerated occupational licenses simply because they have a felony conviction and requires the licensing agency to determine whether the felony “is reasonably related to the license holder's ability to safely or competently practice” in the field of licensure.

This law is similar to, but not identical to Conn. Gen. Stat. 46a-80, enforced by the CHRO. This statute already prohibits state agencies from denying a license to an individual with a criminal conviction without considering (1) the nature of the crime and its relationship to the job for which the person has applied; (2) information pertaining to the degree of rehabilitation of the convicted person; and (3) the time elapsed since the conviction or release. Current law requires that in determining whether an applicant is suitable for license, permit, certificate or registration, the agency should also consider any provisional pardon issued pursuant to section 54-130e, or a certificate of rehabilitation issued pursuant to section 54-108f or 54-130e, and such provisional pardon or certificate of rehabilitation shall establish a presumption that such applicant has been rehabilitated

People need jobs to support themselves and their families. Individuals who have served their sentences should not be denied the opportunity to do so by state licensing requirements that are not related to their ability to safely or competently perform their jobs.

The Commission appreciates the Labor Committee's willingness to address this important issue and urges it to pass HB 5248.